# Agriculture and Forestry Awareness Study Commission Wednesday, December 12, 2018 at 10:00 AM Room 544 of the Legislative Office Building

#### **MINUTES**

The Agriculture and Forestry Awareness Study Commission met at 10:00 AM December 10, 2018 in Room 544 of the Legislative Office Building. Ten members were present.

Senator Brent Jackson, Co-Chair, presided. Call to order

Senator Jackson called the meeting to order at 10:03 AM. He recognized the Sergeant-at-Arms and Commission staff.

#### **Introductory remarks by Co-Chairs**

Senator Jackson gave opening remarks and recognized Mr. Chris Saunders, Commission Counsel, of the North Carolina General Assembly (NCGA). Mr. Saunders gave an overview of the Commission charge in the NC Farm Act of 2018, directing the Commission to study fire tax and utility easement issues.

Senator Jackson reminded the Commission members to fill out reimbursement forms. He noted there will be public comment after the presentations.

#### **Funding fire protection and EMS services**

Senator Jackson recognized Cindy Avrette of the Legislative Analysis Division and Rodney Bizzell of the Fiscal Research Division (FRD), of the NCGA, to go over fire protection and Emergency Medical Services (EMS).

Ms. Avrette discussed fire protection services and funding. She explained how North Carolina funds fire protection and EMS services. She noted there was no statutory obligation for counties to provide fire protection services. However, all counties do provide some level of fire protection. Fire protection is funded by general and special district taxes. Farmland can be enrolled in a Present Use Value (PUV) program, which taxes the land at a lower rate.

Mr. Bizzell discussed the fiscal impact of excluding farmland from fire district taxes. He doesn't have an exact number for the fire-district level, but FRD does have statewide and county-level estimates. There would be a statewide impact of \$17 to 25 million, roughly, with some caveats.

Representative Dixon asked a question about PUV taxation and the "clawback" provision.

Ms. Avrette explained that under the PUV program, the difference in the taxes between assessed and PUV taxes are kept on the books, and the last three years of "deferred taxes" become payable upon the sale of the property for any non-PUV use.

Senator Jackson asked whether, if PUV property is moved from one agriculture operation to another, the owner can obtain a waiver to remain in the program.

Ms. Avrette responded, yes.

Senator Wells asked what is the range of PUVs in the State and what is the difference in the PUV in the highest county versus the lowest?

Mr. Tony Simpson, Director, Property Tax Section, Department of Revenue (DOR), responded that the values range from agriculture (\$40/acre) to high value agriculture (\$1,200/acre). Most people are probably paying \$300 to 400/acre for woodland and \$800/acre for farmland. Counties can determine their own valuation.

Senator Wells commented that the rate varied greatly across the State. He asked if DOR considered normalizing PUV tax schedules across the State?

Senator Sanderson asked how many fire department calls are going to PUV property? Senator Sanderson said it takes a lot of special equipment to handle woodland/rural fires that urban centers don't need to have. It's been mentioned that the cost of rural fire/EMS services are on the increase. He also asked if there was a usage fee for EMS and fire protection services.

Mr. Brian Taylor, Chief State Fire Marshall and Senior Deputy Commissioner, Department of Insurance, responded that it's not clear in a reporting system to see which fire calls are going to woodland/farmland. All fire service is EMS-related. A lot of rural fire departments are not first-responder certified, so there's not a fee.

Senator Jackson asked if there was a way to get more accurate data on which fire calls are going to farmland or woodland properties.

Chief Taylor responded that there is a fire reporting system and they report to the United States Fire Administration Division (under the Federal Emergency Management Agency, which is managed by the U.S. Department of Homeland Security). However, it is not precise enough for this sort of information.

Representative Dixon said as far as EMS is concerned, they all have fees that they charge. He would like to see the write-offs that occur. The fees that are charged for the EMS calls, a lot of them get written off. He said it is a huge figure.

## Presentation on electric utility transmission planning and easement acquisition

Senator Jackson recognized Ms. Dianna Downey and Mr. James McLawhorn of the Public Staff of the North Carolina Utilities Commission (NCUC), to present on electric utility transmission planning and easement acquisition.

Ms. Downey, Staff Attorney and Mr. McLawhorn, Director of Electric Division, gave an overview of transmission planning. They discussed the difference between transmission

("interstate highway") and distribution ("city streets") lines. They explained that it was distinguished by voltage level of the lines.

They said that NCUC does not have authority over establishment of legal disputes concerning easements. There is no statutory requirement that a utility use an easement within a certain time period. Utilities are reluctant to give up easements, because they're expensive and difficult to obtain.

Sen Cook asked why do higher-voltage lines require wider easements?

Mr. McLawhorn responded that it's primarily a safety requirement. The higher the voltage, the higher change of danger to the public.

Senator Cook asked if renewables are reliable?

Mr. McLawhorn said they are talking about different kinds of reliability. He said he was referring to reliability in the lines in terms of the lines physically failing rather than the intermittent nature of renewable resources.

Senator Cook said if the power line is very reliable, but the source is not, then that's not reliable.

Senator Cook asked what was needed for something to be considered a work in progress (WIP). He asked if easements are not in the WIP but are held for future use, do they eventually go through WIP?

Mr. McLawhorn said that's an accounting question, but it's their understanding that easements do not go into the WIP until construction begins.

Representative Dixon wants to know the current number of property owners who have initiated a request to purchase back an easement from the utility?

Mr. Buz Moore, Sr. Acquisition Agent at Duke Energy Progress (DEP), said DEP probably gets one or two requests per month to buy back an easement that's not being used. When that happens, DEP vets it with their engineering/planning department to see if it makes sense. Sometimes DEP can sell the easement back, but not always.

Representative Dixon asked if DEP can produce a historical perspective that would give the NCGA the history of these requests. Does DEP have historical data on how these requests were handled? How many granted, how many denied, and how often requests are repeated?

Mr. Moore said he doesn't have that information. Typically this has to do with development, not farmland. DEP encourages farming on their easements, because that's less maintenance for DEP.

Senator Jackson asked if DEP can provide the Commission with the number of easements released in the last 10 years.

Mr. Moore responded, yes.

Senator Sanderson asked how many miles of unused easements are in North Carolina.

Mr. Moore said DEP has hundreds of miles of unused easements in North Carolina. Right of way (ROW) acquisition is a lengthy process and can take up to 10 years. Solar is changing how DEP plans transmission lines because the load on the lines is increasing at certain times.

Senator Sanderson asked what restrictions are placed on these easements.

Mr. Moore said there are building restrictions (e.g. no swimming pools, no graveyards, etc.).

Senator Jackson asked how many easements does DEP have that are unused and how long have they had them?

Mr. Moore said DEP has had some for 10 to 40 years.

Senator Jackson opened the floor for public comment.

### **Public Comment**

Mr. Tim Bradley, Executive Director of the North Carolina Firefighters Association said their organization represents a bunch of rural firefighters. They are worried about a reduction of funding for these struggling rural fire departments. They have a lot of equipment for specialized woodland/farmland firefighting and have had two big fires dealing with both farmland and woodland.

Representative Dixon said the NCGA is not looking to reduce funding. The NCGA is examining how funding works and considering possibly restructuring funding.

Mr. Moore said easements are very important for DEP's infrastructure. They're not cheap to obtain, so DEP wants to keep the ones they have.

Representative Dixon asked if anything has been learned from the Department of Transportation (DOT) and Forsyth County's condemnation issue. He understands how important these things are, but there may be a point when large entities are unable to maintain these unused easements.

Mr. Jason Hargett, Parker Poe Attorneys and Counselors at Law (on behalf of DEP), said DOT was able to come in and record corridors across property. That placed significant burden on the underlying property and DOT didn't pay any money to property owners. He said that is not what happens with utility easements. Utilities negotiate with landowners to buy easements and it is recorded on a deed. Condemnation statutes require payment for takings. This is very different from DOT and the Map Act.

Representative Dixon asked if there is currently a fair opportunity for a landowner to repurchase their ROW.

Mr. Hargett said yes. A private citizen can approach the utility and ask to buy back. North Carolina doesn't give special treatment to utility property rights.

Senator Jackson asked when these easements are acquired, are they put on to the company's balance sheets?

Mr. Moore responded, yes. That's an asset that DEP has and it's on the balance sheets. It's not added to the rate base until construction starts.

Senator Jackson asked how is the property tax on that easement paid? Does the utility pay or does the underlying property owner pay?

Mr. Moore said the underlying property owner pays the taxes on the underlying property.

Senator Jackson gave a hypothetical scenario: assuming DEP bought an easement and held it for 40 years and within that time period land values have increased since the easement was purchased, is there any process for compensating the underlying landowner for the increased property tax?

Mr. Moore said there is no mechanism for that. For tax purposes, it's up to the landowner to talk to the local tax office.

Senator Jackson asked when DEP is acquiring easements, is it ever anticipated that DEP would hold easements for in perpetuity that are unused?

Mr. Moore said he couldn't answer that, but easements do not expire.

Representative Dixon asked about fire funding. Could DEP assess the meters (where there's an electrical meter)? He plans to ask staff to find the total number of electrical meters in North Carolina, so the NCGA can assess different funding mechanism for fire districts.

Mr. Stuart Surles of Harnett County said has a 37-year old easement on his property that hasn't been used. DEP won't sell the easement back to him. He filed a lawsuit against DEP, but lost. He is requesting a new law that will protect landowners and force DEP to sell easements.

Mr. Hargett, said there is a law on the books that protects landowners. Recordation of easements is required and Mr. Surles bought the land knowing there was an easement on the property. He believes forcing the utilities to sell easements is a constitutional issue.

#### Adjourn

Once public comment was over, the meeting adjourned at 11:26 AM.	
Senator Brent Jackson, Co-Chair Presiding	Cameron Dawson, Commission Clerk